S.B.CIVIL WRIT PETITION NO.1832/2005

Om Prakash Goswami
v.
State of Rajasthan & Ors.

Date of Order :: 10th November, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. H.S.Sidhu, for the petitioner.
Mr. B.L.Tiwari, Dy.G.A.

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The petitioner while holding the post of District Ayurved Officer, Sriganganagar in officiating capacity was placed under suspension under an order dated 17.6.1989 passed by Deputy Secretary to the Government of Rajasthan, Department of Medical & Health Services (Group-4) as a criminal case under Prevention of Corruption Act, 1988 (hereinafter referred to as “the Act of 1988”) was registered against him. After a regular trial by judgment dated 8.7.1999 passed by learned Judge appointed under the Act of 1988 the petitioner was acquitted from the charges under Sections 7, 13(1)(d) read with Section 13(2) of the Act of 1988, as a consequent thereto by order dated 11.11.1999 suspension of the petitioner was revoked and the petitioner was posted as District Ayurved Officer in officiating capacity in the office of the Director, Department of Ayurved, Ajmer.

The grievance of the petitioner sought to be agitated by this petition for writ is that the

respondents while revoking his suspension have not passed any order with regard to payment of full salary for the period of suspension in accordance with Rule 54(2) of the Rajasthan Service Rules, 1951 (hereinafter referred to as “the Rules of 1951”). It is also contended by the petitioner that during the period he was facing suspension the respondents made promotions of certain persons junior to him as District Ayurved Officer as well as Deputy Director, Ayurved but his candidature was not considered as he was facing a criminal trial. Accordingly, a direction is sought for the respondents to promote the petitioner as Deputy Director, Ayurved from the date persons junior to him were appointed as such by way of promotion and also to make the payment of salary for the period he faced suspension with interest. The petitioner has also prayed for making fixation of his pay in accordance with Revised Pay Rules.

A reply to the writ petition has been filed on behalf of the respondents stating therein that an appeal giving challenge to the judgment dated 8.7.1999 passed by learned Judge appointed under the Act of 1988 has already been filed before the High Court of Rajasthan, therefore, neither promotion was accorded to the petitioner nor the issue with regard to grant of full pay during the period of suspension was decided by the competent authority in accordance with Rule 54(2) of the Rules of 1951.

Heard counsel for the parties.

It is the position admitted that the respondents denied the right of the petitioner to be considered for promotion as Deputy Director, Ayurved only on the count that an appeal has already been filed by the State giving challenge to the judgment dated 8.7.1999 passed by learned Judge appointed under the Act of 1988. For the same reason the respondents have also not decided the issue with regard to payment of salary to the petitioner for the period he remained under suspension.

It is well settled that once a trial court convicted or acquitted a person then it is to be treated as a final conviction or acquittal till the same is altered by the appellate court. The respondents merely on the count that they have filed an appeal giving challenge to the judgment dated 8.7.1999 acquitting the petitioner from the charges of criminal offence cannot deny a valuable right of the petitioner to be considered for promotion and also for his fixation in revised pay scale as well as the payment of salary pertaining to the period of suspension in accordance with Rule 54(2) of the Rules of 1951. After acquittal from the charges of criminal offence under the Act of 1988 there is nothing adverse to the petitioner to deny the claims made by him in the instant petition for writ.

Accordingly, this petition for writ deserves acceptance. The same, therefore, is allowed. The respondents are directed to consider the candidature of the petitioner for the purpose of promotion as Deputy Director, Ayurved ignoring the criminal trial faced by him for offence under the Act of 1988. The respondents are also required to pass an order in accordance with Rule 54(2) of the Rules of 1951 for payment of salary to the petitioner for the period he remained under suspension. The petitioner is declared entitled to be fixed in revised pay scales ignoring the pendency of the appeal giving challenge to the judgment dated 8.7.1999.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.